

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**ANTI CORRUPTION DIVISION CR.CA 31 OF 2011**

**1<sup>ST</sup> INZIKU PAUL CLAY ::::::::::::::::::::**  
**2<sup>ND</sup> ADERUBO VINCENT**  
**3<sup>RD</sup> TOKO ALENI** } **APPELLANTS**

**VERSUS**

**UGANDA :::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE P. K. MUGAMBA**

**JUDGMENT**

Inziku Paul Clay (1<sup>st</sup> Appellant), Aderubo Vincent (2<sup>nd</sup> Appellant) and Toko Aleni (3<sup>rd</sup> Appellant) were on 1<sup>st</sup> November 2011 each convicted by the Chief Magistrates' court. The three charges they were convicted of were Embezzlement, contrary to Section 19 of the Anti Corruption Act, Causing Financial Loss, contrary to section 20 of the Act and Abuse of office, contrary to Section 11 of the Act. Consequently they were sentenced to 1½ years' imprisonment on each of the counts but the sentences were to run concurrently. Court disqualified the appellants from holding a public office for a period of 10 years in accordance with S.46 of the Anti Corruption Act. In

addition each of them was ordered to refund shs 2,000,000/= to Arua Municipal Council.

The memorandum of appeal reads as hereunder:

(1) The learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence on court record and thus arrived at a wrong verdict.

(2) The learned trial Chief Magistrate erred in law and fact when she held that the appellants committed the offence of embezzlement, causing financial loss and abuse of office when the ingredients were not proved.

(3) The learned trial Chief Magistrate erred in fact and law when she convicted the appellants for offences without supporting evidence on court record.

(4) The learned trial Chief Magistrate erred in law and fact when she passed a very harsh sentence against the appellants given the circumstances of the case.

Clearly the first three grounds above are general and revolve around evaluation of the evidence on record by the trial court. This court being the first court of appeal in the matter, has the onus to go over the record and give the evidence a fresh scrutiny in order that it may reach its own conclusion. See ***Nsibambi vs. Nankya*** [1980] HCB 81. Admittedly this court

does not have the advantage of the court of first instance which observed witnesses as they testified.

The facts leading to the prosecution of the appellants in the lower court are not complicated. At the material time all the three appellants were employees of Arua Municipal Council. The first appellant was Acting Town Clerk but substantively he was Deputy Town Clerk. The second appellant was Acting Chief Finance Officer but substantively he was an Accountant with Arua Municipal Council. The third appellant was Senior Accounts Assistant in charge of Arua Municipal Council's salary section. On 17<sup>th</sup> May 2006 the second appellant made a written requisition for shs 5,000,000/= to be used in a ceremony to swear in councilors. The money was to be transferred from the salaries Account to the Administration Account. The process was duly endorsed by the first appellant, besides others. Following the endorsement of the requisition a cheque was written by the third appellant. It was a cash cheque in the names of the third appellant. For effect it was twice endorsed by the first appellant. The cheque was duly honored by the bank and cash shs 5,000,000/= was paid to the third appellant the same day, 17<sup>th</sup> May 2006. Curiously a voucher relating to the transaction was not written until afterwards. Evidently the first appellant signed it later. However that voucher does not bear details of the transaction let alone the payee.

The charge of embezzlement in count 1 applied to all the three appellants jointly. For a charge of embezzlement to be sustained a key element is theft

or conversion. It must be proved by the prosecution that these Government employees stole the shs 5,000,000/= belonging to their employer and that they had access to that money by virtue of their employment. Certainly each of the three appellants played a part in whatever eventually transpired, not necessarily in the theft. Besides endorsing the cheque the first appellant signed the belated voucher which was incomplete and gave instructions for the processing of the requisition. Clearly the second appellant made the requisition. The third appellant received the money in issue from the bank. Though the third appellant alleges he handed over the money to the second appellant, that version is refuted by the second appellant. No independent evidence exists to support the claim by the third appellant that he handed over the money to the second appellant. There is no evidence of a common intention between the three appellants to have the third appellant convert the money to himself. The inescapable conclusion is that conversion of that money was done by the third appellant. It is he who embezzled the money he received in cash from the bank when acting as agent for his employer.

Consequently I do not agree with the finding of the learned Chief Magistrate that appellants other than the third appellant embezzled the money. As no such evidence exists both the first and second appellants are acquitted on the first count. The third appellant however is properly convicted as there is no accountability on his part for the shs.5, 000,000/= he received.

The trial Chief Magistrate set out reasons why she convicted all the appellants on count 2 and count 3. I find no reason to disturb her findings. I must however make a few observations. All the three appellants were experienced officers in their various callings yet they lent themselves to committing avoidable derelictions. The first appellant against all expectation endorsed an open cheque even though no voucher was in place to back it up. For all his worth he signed a voucher afterwards to give credence to the cheque. He was the accounting officer. The second appellant requisitioned for the money but he made no follow-up to ensure the money requisitioned for was duly transferred to the Administration Account and applied in tandem with the requisition. The third appellant besides failure to ensure the cash he drew from the bank was passed on to the Administration Account, did not have a voucher in place showing who the payee was, let alone the vital particulars of the voucher itself. The obvious omissions and the fact that none of the appellants questioned all this apparent irregularity would suggest a common scheme to cause financial loss. There is no doubt each of the appellants also acted arbitrarily and abused their offices.

This appeal is also against the sentence and orders of the trial court which, it is argued by the appellants are harsh in the circumstances. In light of the maximum penalties provided for under sections 19, 20 and 11 of the Anti Corruption Act the sentences imposed are clearly lenient. It is 14 years under S.19, 14 years under S.20 and 7 years under S.11 of the same Act. The orders imposed under S.11 and S.46 of the Act are justifiable under the

provisions. The trial court reached a proper decision save that it was lenient on sentences, which I shall leave undisturbed.

Finally this appeal has succeeded partially regarding count 1 where the first and second appellants are acquitted of the charge of embezzlement and the respective sentences imposed on them are set aside. That besides, the decision of the trial court is upheld.

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P.K MUGAMBA

**JUDGE.**

**30<sup>TH</sup> March 2012**